IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/04/2004

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR

CRL.O.P.NO. 8503 OF 2002
AND
CRL. M.P. NOS. 3955 & 3956 OF 2002

1. Vijayalakshmi
2. High Court Petchi,
3. Ravichandran
4. Mumoorthy
5. Gopala Krishnan
6. Sridevi Meena
7. Dhanalakshmi
8. Jayalakshmi ... Petitioners

-Vs-

State through the
Sub Inspector of Police,
Thiruparankundram Police Station. ... Respondent

Petition filed under Section 482 of the Cr.P.C. to call for the records in C.C. No.308 of 2001 and quash the same as stated therein.

For Petitioners : Mr.K.Sukumaran

For Respondent : Mr.I. Subramanian, PP

:ORDER

The petitioners are accused 1 to 8 in C.C.No.308 of 2001 on the file of the learned Judicial Magistrate No.7, Madurai.

2. Devaraj, the de facto complainant in Crime No.63 of 2001 on the file of the Thirupparankundram Police Station, filed a complaint before the learned Magistrate alleging that his wife, who is living separately, had given their daughter, who was 13 years old, in marriage to her brother and, therefore, she has committed offences punishable under Sections 4, 5 and 6 of The Child Marriage Restraint Act, 1929. The said complaint was forwarded by the learned Magistrate under Section 156(3) of the Cr.P.C. for investigation and report. On receipt of the complaint, a crime was registered as Crime No.63 of 2001 by the respondent police and investigation was taken up, which ultimately resulted in filing of a final report against the petitioners, who are arrayed as A.1 to A.8.

3. The first petitioner is the wife of the de facto complainant and the 2nd petitioner is the mother of the first petitioner and petitioners 3 to 8 are the children of the second petitioner. The allegation in the final report is that the first petitioner was living separately from the de facto complainant on account of ill-feelings between her and the de facto complainant, who is her husband, and that the first petitioner by joining with the other petitioners got her daughter, aged about thirteen years, married to her younger brother Gopalakrishnan, who is the 5th petitioner on 8.12.2000 at Thiruparankundram Murugan Temple and, therefore, they have committed offences punishable under Sections 4, 5 and 6 of The Child Marriage Restraint Act, 1929.

4. The learned counsel appearing for the petitioners submits that in view of Section 10 of the Child Marriage Restraint Act (for short, 'the Act'), forwarding of the complaint under Section 156(3) of the Cr.P.C. for investigation and report is bad in law, as the Magistrate has no jurisdiction to take cognizance of an offence on a police report under the said Act, in view of the bar under Section 10 of the Act.

5. On the above contention, I have heard the learned Public Prosecutor.

6. I do not propose to go into the facts in this petition as the only question that is to be decided by this Court in this petition is :-
"Whether the learned Magistrate was justified in taking cognizance of the offence on a police report filed under Section 173 Cr.P.C. ?"

7. Chapter XV of The Code of Criminal Procedure deals with complaint to a Magistrate. In the said chapter, Section 200 requires the Magistrate taking cognizance of an offence on a complaint to examine upon oath the complainant and the witnesses present, if any. It is open to him to decline to take cognizance of the offence for appropriate reasons in appropriate cases. Once he takes cognizance, he has to issue process under Section 204 of the Act and where he decides to postpone issue of process, he may conduct an enquiry into the case himself or direct an investigation to be made by a police officer or by such other person as he deems fit for the purpose of deciding whether or not there are sufficient grounds for proceeding. This is a judicial discretion of the Magistrate.

8. In the present case, the learned Magistrate evidently thought that it was unnecessary to conduct an enquiry and, therefore, ordered investigation under Section 156 (3) of Cr.P.C., by forwarding the complaint. The learned Magistrate evidently overlooked the provisions of Section 10 of the Act, which reads as follows :-
"Any Court, on receipt of a complaint of an offence of which it is authorised to take cognizance, shall, unless it dismisses the complaint under Section 203 of the [Code of Civil Procedure, 1973 (2 of 1974)] either itself make an inquiry under Section 202 of that Code or direct a Magistrate subordinate to it to make such inquiry."

9. Therefore, it is clear that on receipt of the complaint of an

offence under the Act, unless the Magistrate dismisses it under Section 203, he has to make an enquiry by himself or direct such enquiry to be conducted by a Magistrate subordinate to him. Section 10 of the Act does not contemplate forwarding the complaint for an investigation under Section 156 (3) of Cr.P.C.

10. It is to be remembered that the Act has been enacted to restrain solemnization of child marriages and offences under the Act are to be treated as cognizable offences under the Act as could be seen from Section 7 of the Act. It is also not out of place at this stage to refer to the judgment of the Kerala High Court in C.K.MOIDOO AND OTHERS Vs. VAYYAPRATH KUNNATH MAYAN (1984 CRL.L.J. 322). The Kerela High Court held that it is open to the Magistrate to take cognizance and issue process or otherwise deal with the matter in law; but where he does not choose to dismiss the complaint under Section 203 of Cr.P.C., after receiving the same, he has a statutory duty to make an enquiry himself under Section 202 of the Act or direct the Magistrate subordinate to him to make such enquiry and Section 10 of the Act being a special provision in relation to complaints in regard to offences under the Act, it has an overriding effect on the provisions of Section 2 02 of the Act, which may be in conflict with it. The Kerala High Court was of the view that there was conflict because under the scheme of Chapter XV of the Code, it is open to the Magistrate to issue process even without conducting an enquiry or directing an investigation, whereas under Section 10 of the Act a Magistrate cannot issue process unless he himself conducts an enquiry under Section 202 or direct a Magistrate subordinate to him to make such enquiry and to the extent of the conflict the provisions of the Act will override the provisions of Chapter XV of the Act. The Court also considered the purpose for which Section 10 was incorporated under the Act and observed that Section 10 of the Act insists that there should be an inquiry - not even an investigation is sufficient - by the Magistrate himself or by a subordinate Magistrate into the allegations because there is every danger to the process of the Court being abused and innocent persons being harassed for the simple reason that some persons may resent the marriage or resent the persons involved in the marriage and rush to Court alleging that the bride married is a child. Therefore, if an enquiry is conducted by the Magistrate and if sufficient grounds for proceedings are disclosed, the Magistrate is at liberty to proceed and if such an enquiry does not disclose sufficient grounds, he may naturally decline to issue process and thereby persons against whom there is no possibility of evidence being marshaled would be protected from being harassed and humiliated. I am in respectful agreement with the view expressed by the Kerala High Court.

11. When we apply the above principles, the order of the learned Magistrate in forwarding the complaint for investigation under Section 1 56 (3) Cr.P.C., and later taking cognizance of an offence on a police report is bad in law as it is against the provisions of Section 10 of the Act. In view of the above, the proceedings in C.C.No.308 of 20 01 have to be quashed. Accordingly, the proceedings in C.C.No.308 of 2001 are quashed. The criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes

GLN

To

1. The Sub Inspector of Police
Thiruparankundram Police Station.

2. The Public Prosecutor
High Court
Madras.